

Cornell Real Estate Review

Volume 2

Article 5

7-2003

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Saeko Atsumi
Cornell University

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Recommended Citation

Atumi, S. (2003). The repeal of rent control in Malaysia. *Cornell Real Estate Review*, 2, 29-38.

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The Repeal of Rent Control in Malaysia

Abstract

[Excerpt] Policy Background

A newspaper reported that the Federal Government of Malaysia had indicated its intention of repealing the Control of Rent Act 1966 since the beginning of the 1980s (Kathirasan, 1997), when the current prime minister, Mahathir, took over that position after seeing the economic expansion of the 1970s. Throughout the decades of Mahathir era, the Malaysia Incorporated Policy¹ has been intensified to achieve competitive and robust economy moving towards globalization, one that emphasizes the productive relationship between private and public sector. The key concept of this policy is to focus on the liberalization of the Malaysian economy, pursuing export-led growth in spite of the rise of protectionism, and to increase the competitiveness of Malaysian products in the global market (Rahman, 1993).

Rent control had become inconsistent with this trend including pursuing deregulation, a market economy, and the full exercise of property rights. The fact that control hampered urban redevelopment and underutilized scarce land capital for a long time was considered to be problematic. Thus, repeal of rent control was expected to reactivate flows of land capital by encouraging investment in pursuit of further economic development. In terms of the ethnic problem in Malaysia, putting urban properties mostly owned by ethnic Chinese on the market after the repeal of rent control is supposed to mitigate the ethnic imbalance with Malays. Along with the nation's policy which ensures Malay participation in the modern sectors of economy, the Federal Government of Malaysia recognized that it was important to mobilize a large amount of assets to realize certain share of Malay ownership of capital (Malaysia Prime Minister's Department, 1991b).

Keywords

Malaysia, Malaysia real estate, Malaysia Incorporated Policy, international real estate, rent control, Control of Rent Repeal Act of 1966, owner-tenant relations, tenancy rights, landlord rights, affordable housing

The Repeal of Rent Control in Malaysia

Saeko Atsumi*

Policy Background

A newspaper reported that the Federal Government of Malaysia had indicated its intention of repealing the *Control of Rent Act 1966* since the beginning of the 1980s (Kathirasan, 1997), when the current prime minister, Mahathir, took over that position after seeing the economic expansion of the 1970s. Throughout the decades of Mahathir era, the Malaysia Incorporated Policy¹ has been intensified to achieve competitive and robust economy moving towards globalization, one that emphasizes the productive relationship between private and public sector. The key concept of this policy is to focus on the liberalization of the Malaysian economy, pursuing export-led growth in spite of the rise of protectionism, and to increase the competitiveness of Malaysian products in the global market (Rahman, 1993).

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Control of Rent Repeal Act 1997

The *Control of Rent Act 1966* had been in force for 30 years when the Federal Government decided to implement the Control of Rent Repeal Act 1997 (the Repeal Act) on September 1, 1997. The Minister for Housing and Local Government, Ting Chew Peh, read the bill for the repeal in April 1997. The objective was described as follows:

*Saeko Atsumi (MRP '02) is a graduate of the Department of City and Regional Planning, Cornell University.

¹ The concept of Malaysia Incorporated was propounded by Mahathir in 1983 as one of the fundamental bases of national development. He defined it as a system of co-operation between the public and the private sector towards the creation of a Malaysian Company to achieve progress and where the profits generated will be shared by all (Rahman, 1993).

“With the passage of time, the Act, which was originally enacted in 1966 to regulate and control the rental of privately-owned buildings built before 31 January 1948 owing to the shortage of housing during the post-war period, has since outlived its usefulness. On the contrary, it has lent itself to abuse with the further subletting of the controlled premises by the tenants at the expense of the landlords. It is now felt that the time has come for the Act to cease to operate, and for the landlords to be able to recover possession of the controlled premises for purposes of development.”

This clearly states that the prime objective of the repeal of rent control is to end profiteering by tenants and enable owners to recover possession for redevelopment. Initially, the government authorities had assumed that negative aspects of rent control would become less significant with economic development and demolition of controlled buildings under the dominant market power. However, rent-controlled buildings usually survived well because of the disincentive for owners to demolish and rebuild their premises. Thus, the Federal Government of Malaysia was driven to repeal rent control for the whole nation without creating any other local option.

A 28-month transitional period starting in September 1, 1997, and lasting until December 31, 1999, was provided to alleviate immediate needs for alternative housing and to facilitate adjustment for tenants who would have to begin paying market rent. During this period, landlords were only allowed to increase the rent based on a stipulated formula (Table 3.1). However, the duration of the transition period could be decided at the discretion of the state government.

The repeal stipulated that, from September 1, 1997, “any tenancy between a landlord and a tenant before the date of the repeal shall be deemed to have ceased” (Section 3). However, any tenants, including sub-tenants and joint tenants, who were in actual lawful occupation of the premises were deemed to enter into a new tenancy from this date (Section 6) until the end of transitional period. This meant that the absentee tenants - mostly chief tenants who had been subletting units to sub-tenants without living there - lost their tenancy under the *Control of Rent Repeal Act 1997*.

Formula for New Rental Rates During Transitional Period

Phase	Time Frame	Formula
Year 1	1 September 1997 - 31 December 1997	$R + 1/4(M-R)$
Year 2	1 January 1998 - 31 December 1998	$R + 1/2(M-R)$
Year3	1 January 1999 - 31 December 1999	$R + 3/4(M-R)$

Source: Schedule, Section 7, *Control of Rent (Repeal) Act 1997 (Act 572)* (1997).

Note: "R" is the fair rent prevailing before the repeal of the Act; "M" is the monthly rentable value of the premise fixed at one-twelfth of the annual value of the property as assessed by the local authority where the property is located.

Landlords had a right to recover a vacant possession without compensation if there was non-payment or arrears in payment of rent by the tenants during the transitional period. Landlords who wanted to recover possession before the expiry of transitional period had to pay a certain amount of compensation if there had not been such problems in payment of rent. In order to achieve the objective of the transitional period, the *Control of Rent Repeal Act 1997* did not allow recovery of possession for development of premises during the transition.

With the expiration of the transition at the beginning of the 21st century, landlords had a right to recover the vacant possession of the premises without any payment of compensation. From January 1, 2000, entry into any new tenancy became free and market rent could be determined at the discretion of the landlord. Landlords who intend to exercise the right to vacant possession have to serve the tenant notice to vacate; tenants have to be given a period of three months to vacate the premises. Tenants have to decide whether to accept a new tenancy at market rent or to look for other premises. With the repeal in 1997, the law also stipulated establishment of a Decontrol Tribunal to adjudicate disputes between landlords and tenants. This continued to operate until December 31, 1999.

Process

The State Government of Penang met with severe criticism from various quarters for its ill-prepared implementation of the repeal. Affected tenants complained that the government had not ensured alternative housing for them before the repeal and that there had been an inveterate shortage of low-cost housing. Those tenants formed a group called the SOS to resist abuse by landlords; it demanded that rent increases be gradual and that appropriate compensation be paid to ten-

ants affected by eviction. In addition, the repeal of rent control drew public attention to the issue of preservation of decontrolled buildings with historical and cultural value. The Penang Heritage Trust asked the state government to set up preservation guidelines before the repeal of rent control as a brake on the demolition of decontrolled buildings and the decay of the inner city of Georgetown. The repeal of rent control ignited discussions not only about tenancy and housing but also the survival of small businesses and culture in Penang.

In response to such public concerns, the state government appealed to the federal government for postponement of the full repeal of rent control until the year 2003 to make better preparation. This appeal was rejected. Instead, the federal government provided RM80 million to the Penang State Government to abate the negative impacts of decontrol at the end of 1999. With the RM20 million the state already had, there was RM100 million in total to use in incentives for landlords to refurbish their decontrolled properties. The conditions for obtaining grants were that landlords charge tenants reasonable rent without eviction for a minimum of three years, at which time it was expected that more low-cost housing would become available for absorbing evicted tenants. At the same time, this fund was supposed to encourage urban renewal, stimulating the construction industry and helping tourism with the restoration of old buildings after the abolition of rent control (*The Star*, December 21, 1999).

In the meantime, as an immediate measure effective from August 2000, lower-income tenants affected by decontrol have been relocated to low-cost units at the outskirts of Georgetown. There were 957 units in total available for rent in two low-cost housing schemes. The state government screened applications based on income criteria, which were relaxed in the urgent situation after the repeal. Priority for low-cost housing was given to households earning less than RM750 monthly for a couple or RM1,500 for five or more members. The rent per unit was fixed at RM100 for one-bedroom and RM150 for two-bedroom flats. According to a state government officer, there had been about 600 applications for low-cost housing and 240 tenants had moved in as of March 2001. The alternative low-cost units were available only for five years while waiting for more low-cost housing to become ready for occupation.

In addition to rehousing the tenants, the state government established a one-stop center to collect information on premises available in the inner city and pass it on to affected tenants, especially to those who needed commercial premises. The Penang Heritage Trust and the Consumers Association of Penang set up a property watch to monitor the prices and rents of decontrolled premises because there was a need to watch market rates to reduce housing mismatches (Cheah, 2000).

Problems and Obstacles

Direct Impacts for Tenants

Overnight Rent Hike

The direct impacts of the repeal of rent control were particularly serious for low-income tenants who had benefited from low rent for more than 30 years. *The Star* reported that 70 percent of a total of around 60,000 ex-control tenants were able to manage the impacts of repeal on their own, but 30 percent were categorized as low-income people who were in need of support (Choong, 2000a). Although most of the tenants thought that a certain amount of rent increase was unavoidable, they appealed to landlords, saying that they could not afford more than a 50 percent increase in rent. The increase rate for rent varied case by case, mostly ranging from 50 to 300 percent (C H Williams Talhar & Wong, 2001). However, it easily exceeded 500 percent for most tenants who had been paying less than RM200 for two-story shophouses, as the market rent ranged RM1,000 to 2,500 without any renovations (Cheah, 2000). The SOS reported that there were 515 cases of exorbitant rent hikes within just a few months after the repeal (Choong, 2000b).

There was a tendency for landlords to overestimate the value of their properties, since “market rents” were determined arbitrarily upon the repeal of rent control. Consequently, rents for units in the same buildings frequently varied, sometimes ranging from RM500 to 2,500 (Cheah, 2000).

Eviction of Tenants

The eviction of tenants also became rampant. According to *The Star*, 290 cases of eviction were recorded as of March 2000 (*The Star*, March 21, 2000), and they seem to be increasing as time passes. Even if tenants were able to renew their tenancy for the year 2000, they would face the same trouble again a year later, since tenancy lasts one year in general. For the tenants who had made expenditures for the repair of properties in the past, it was hard to accept that landlords could recover a vacant possession without compensating them. Lee found that about 30 percent of a sample of tenants in Georgetown thought it was acceptable to move out of the current place if they were able to get a certain amount of compensation (Lee, 1998).

In addition, the damage from eviction was tremendous for tenants who had been operating their own businesses at decontrolled properties for some generations. More than a half of a sample of tenants in Georgetown indicated that they were unwilling to move out of their current place because of their business or employ-

ment (Lee, 1998). Most of those who wanted to keep staying at their current places had to accept substantial rent hikes; otherwise, they might have to move to shophouses on the mainland because transactions for shophouses were concentrated in that area in 2000.

Change in Urban Environments

The Penang State Government had a strong desire to propel urban renewal with the end of rent control. A majority of landlords also indicated their interest in redeveloping their properties for commercial use (Lee, 1998). Transactions for prewar shophouses became very active after the repeal of rent control (Malaysia Ministry of Finance, 1998). As described previously, the state government prepared RM100 million in loan grants for landlords to refurbish their properties. However, contrary to the government's expectation, loans did not work as incentives for property owners. During the year of 2000, the state government received only 6 applications for loan grants, which involved 16 properties (*The Star*, November 28, 2000). There were several reasons for this - lack of publicity, limited maximum loan per house, and strict conditions for ensuring that landlords maintain existing tenants for a certain duration (*The Star*, November 22, 2000). Additionally, a substantial number of landlords indicated concern about the lengthy application procedure (Lee, 1998). A lack of guidelines for preservation of buildings also increased the uncertainty of the property market and strongly discouraged investments in decontrolled premises. At the same time, there have been a lot of inquiries from foreign buyers, especially from Hong Kong and Singapore, who are interested in development of heritage buildings (Suthakar, 2000). In this regard, progress toward the initial objective of the repeal of rent control has not been successful.

The attitude of "wait-and-see" among landlords and developers seemed to contribute in part to the deterioration of the urban environment following vacation of decontrolled premises. The Municipal Council of Penang Island found that 569 premises were vacated on 123 streets in Georgetown (*The Star*, November 22, 2000). *The Star* reported that there had been a substantial number of tenants among coffee shop owners, merchants, and craftsmen who had already closed their businesses (Hwa, 2000a). Chong mentioned that the vacated buildings have become hotbeds for illegal occupation by homeless people, drug addicts, and vandals (Chong, 2001), accelerating the decay of the inner city.

Since most of the landlords of decontrolled premises in the inner city of Georgetown showed interests in developing their properties as commercial or office space, a change in the characteristics of the urban area as a result of conversion of residential buildings for commercial uses seems to be inevitable.

Shortage of Affordable Housing

Repeal of rent control has revealed the existing housing shortage in Penang. The limited availability of low-cost housing was obviously one of the hindrances to smooth decontrol because it limited the capacity of the government's rehousing program. The gap between the quantities of low-cost housing demanded and supplied in Penang accumulated to 22,257 units in 1997, which indicated that the supply met only half of the demand (Universiti Sains Malaysia, 1998). The repeal of rent control worsened this situation by adding another 3,889 tenants who needed housing to a long waiting list of applicants for low-cost housing (Hwa, 2000b).

The government's timing of the repeal of rent control did not take into consideration the critical financial situation. The Asian Financial Crisis that hit several countries, including Malaysia, in July 1997, brought severe damage to housing developers (*The Star*, April 14, 2000). Since the crisis, Malaysia's housing market has fallen into recession, forcing housing developers into financial difficulties particularly in terms of the number of unsold upmarket houses. Consequently, a large number of housing projects were stalled or delayed, which further worsened the shortage of low-cost housing. In Penang, the market rent for high-cost housing declined, while that for low- and medium-cost housing rose as a result of the Asian Financial Crisis (Universiti Sains Malaysia, 1998). There is no doubt that the repeal of rent control right after the financial crisis was disastrous for lower income people.

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